IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 36 OF 2007.

Shri Vyas Ramakrishna Prabhu Lawande,
major, resident of Sanquelim Bazar, Sanquelim, Goa. .... Petitioner.

Versus

The Land Acquisition Officer,
Mapusa, Goa. .... Respondent.

Mr. J.P. Mulgaonkar, Advocate for the Petitioner.

Mr. G. Shirodkar, Additional Government Advocate for the Respondent.

CORAM: S. A. BOBDE, J.

DATE: 22nd JUNE, 2007.

ORAL JUDGMENT:

Rule. Rule returnable forthwith. Heard by consent.

2. The petitioner has challenged the Order dated 31.08.2006 passed by the Additional District Judge, Mapusa in Civil Misc. Application No.56/05 in Land Acquisition Case No. 5/90. By the impugned order, the learned Judge has rejected the petitioner's application, claiming interest on solatium and amount deducted towards tax.

3. At the outset, Mr. Mulgaonkar, learned counsel for the petitioner stated that he does not press the demand in respect of the

deduction towards tax. The only contention raised by the learned counsel for the petitioner is that the petitioner ought to have been granted interest on solatium in respect of the award as enhanced by the Reference Court on 24.09.96 granting compensation to the petitioner at the rate of Rs.12/- per sq.m. in respect of acquisition of an area of 32,930 sq.metres of the property situated at Morlem village in Satari taluka. The petitioner's claim for interest on solatium is based on the Judgment of the Supreme Court in ***Sunder v. Union of India*** reported in **(2001) 7 SCC, 211** where the Supreme Court held that a person who receives compensation in respect of land which is acquired, is entitled to interest on solatium. Therefore, according to the learned counsel for the petitioner, even though the petitioner's appeal was disposed of on 7.03.98, that is before *Sunder's* case, the petitioner would be entitled to interest on solatium.

4. Mr. Shirodkar, learned counsel for the respondent submitted that interest on solatium is not available to a person who has already received the amount of compensation and the matter is finally closed by disposal of the appeal. The learned counsel for the respondent relies on the observations of the Supreme Court in ***Gurpreet Singh v. Union of India*** reported in **(2006) 8 S.C.C., 457**. The Supreme Court observed in paragraph 54 as follows :-

> "One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in

various cases pending in courts all over the country, we permitted the counsel to address us on that question. That question is whether in the light of the decision in *Sunder,* the awardee/decree-holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on *Sunder* on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate Court does not specifically refer to the question of interest on the solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the Appellate Court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of *Sunder* and say that the compensation awarded

> includes solatium and in such an event interest on the amount could be directed to be deposited in the execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution Court will be entitled to permit its recovery from the date of the judgment in *Sunder* (19-9-2001) and not for any prior period. We also clarify that this will not entail any reappropriation or fresh appropriation by the decree-holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question. "

5. The above observations clearly lay down the entitlement of an awardee to interest on solatium in the light of the decision of *Sunder's* case if execution is pending. The only thing that needs to be inquired into, therefore, is whether the petitioner's claim for interest on solatium has been pending execution. The facts of the case show that no execution is pending since the compensation was offered by the respondent and received by the petitioner in pursuance of the Lok Adalat's order dated 17.03.98 by which the appeal was disposed of. There was therefore no occasion for the petitioner to levy execution.

6. It was however contended by Mr. Mulgaonkar, learned counsel for the petitioner that an application has been made by the petitioner for interest on solatium and that could be construed as a fact that execution was pending. It is not possible to agree with this contention. In order to enable an awardee to claim interest on solatium on the basis of *Sunder's* case, execution must be pending independent of the claim for such interest. In other words, there should be no discharge of the obligation of the State to pay compensation to the awardee. If such compensation has already been paid, it cannot be obviously said there is no occasion for execution to be levied. In such cases, it cannot be said that execution activated in any way because of belated claim for interest on solatium.

7. In this view of the matter, I see no reason to interfere with the impugned order. Writ Petition is therefore dismissed. Rule is discharged. No order as to costs.

S. A. BOBDE, J.

sl.